TR HAMZAH & YEANG SDN BHD

v.

CITY CENTRE SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
UMI KALTHUM ABD MAJID J
[COMPANIES (WINDING UP) NO: D6-28-9-2000]
23 JULY 2013

COMPANY LAW: *Winding up - Official Receiver and liquidator - Appointment of - Companies Act 1965, s. 227 - Nomination of person or persons as liquidator for wound up company - Opposition to proposed nominees - Whether nominees in position of conflict of interest - Whether Official Receiver should remain as liquidator*

These were applications made by three applicants ('the parties') under s. 227 of the Companies Act 1965 whereby each application ('encls. 227, 234 and 258') sought to nominate person or persons as liquidator of the wound up respondent company from the Official Receiver. *Vide* encl. 227, the applicants submitted that their nominee, one Robert Teo ('Robert'), should be appointed as liquidator as he was managing the affairs of the respondent's parent company. However, the applicants in encls. 234 and 258 strongly opposed this on the ground that Robert would be in a position of conflict of interest and there would be a real danger of bias. As an alternative, the applicant in encl. 258 suggested nominees from Deloitte Corporate Solutions Sdn Bhd ('Deloitte') as liquidator. *Vide* encl. 234, the applicant submitted that its nominee, Augustine a/l James ('Augustine') received the highest number of votes and combined total value of claim among the creditors. The applicants further contended that Augustine was a court appointed liquidator and had managed disposal in liquidation of sums in excess of RM200 million. Nonetheless, the applicants in encls. 227 and 258 opposed the application and contended that Augustine's firm appeared to be insolvent and he was not competent to manage the affairs of the respondent. The applicant in encl. 258 submitted that its nominees ought to be the preferred choice as their nominees were from a larger establishment in contrast with other proposed nominees. The parties were not able to reach a consensus on the appointment of a suitable private liquidator. Hence, the three separate applications.

Held (dismissing applications in encls. 227, 234 and 258):

(1) The opposition against nominee *vide* encl. 234, Augustine, was on grounds that his company appeared to be insolvent and had not been filing statutory returns since 2007 *vide* exh. BGS1. Even though Augustine obtained the most number of votes and value of claim among creditors, nevertheless, the concerns of the remaining applicants were well founded based on exh. BGS1. Hence, Augustine was not suitable to be appointed as liquidator. (para 23)

(2) As for nominee *vide* encl. 227, Robert, there was a possibility that his position may be in conflict with his role as liquidator based on the ground that he was the appointed liquidator for the respondent's parent company, USSB. As USSB's only valuable assets available was its stake in the respondent, this placed Robert in conflict of interest *vis* the other creditors of the respondent company where his impartiality might be questioned *vis* the interest of the respondent company *vis à vis* USSB. With respect to the alternative nominees from Deloitte, the court was not able to accept the proposal as it was made *vis* a submission from the Bar and not applied *via* an application. (paras 24 & 30)

(3) Instances of conflict should be avoided as far as possible. For that reason, the nominees *vide* encl. 258 was not suitable to be appointed as liquidators of the respondent since one of the nominees was in a position of conflict of interest due to the nominee's dealings with the Lion Group which was related to North Plaza Sdn Bhd ('North Plaza') where North Plaza had purchased 16 parcels of land belonging to the respondent. (para 26)

(4) By virtue of her office, the Official Receiver was impartial and would act in the best interest of all creditors. None of the applicants had contended that the Official Receiver was incompetent or incapable of dealing with the winding up of the affairs of the respondent and distributing its assets. Further, the Official Receiver should be allowed to continue with the liquidation of the respondent as the only core matter left was the disposal of the 16 parcels of land. To substitute the Official Receiver at that stage would only involve unnecessary

costs and cause further delay. Hence, in the best interest of the respondent in liquidation, the Official Receiver should remain as liquidator. (paras 27 & 29)

Case(s) referred to:

Advance Housing Pty Ltd (In Liq) v. Newcastle Classic Development Pty Ltd [1994] 14 ACSR 230 ***(refd)***

Australian Securities and Investments Commission v. Westpoint Corporation Pty Ltd [2006] 56 ACSR 640 ***(refd)***

Dallhold Investments Pty Ltd (In Liq) v. Gold Resources Australia Ltd (provisional liquidator appointed) [1991] 9 ACLC 1500 ***(refd)***

Envirico Ltd v. Farstad Supply A/S [2011] 3 All ER 451 ***(refd)***

Koh Heng Jin @ Koh Heng Leong v. Koh Hooi Cheow Realty Sdn Bhd (No 2) [2009] 1 LNS 1646 HC ***(refd)***

Lee Teng Siong v. Lee Kheng Lian & Ors [2006] 4 CLJ 443 CA ***(refd)***

North Plaza Sdn Bhd v. United Securities Sdn Bhd [2010] 1 CLJ 470 CA ***(refd)***

Northbourne Developments Pty Ltd v. Reiby Chambers Pty Ltd [1989] 1 ACSR 79 ***(refd)***

Ooi Woon Chee & Anor v. Dato' See Teow Chuan & Ors And Other Appeals [2012] 2 CLJ 501 FC ***(refd)***

Parmalat Capital Finance Ltd & Ors v. Food Holdings Ltd (In Liquidation) & Anor [2009] 1 BCLC 274 ***(refd)***

Procam (Pte) Ltd v. Charles Jocelyn Tichborne Nangle & Anor [1990] 4 BLJ 208 HC ***(refd)***

Re Bishop & Sons Limited [1900] 2 Ch 254 ***(refd)***

Re Bloxwich Iron and Steel Company (The Weekly Notes) Part I of 1894 ***(refd)***

Re Hermann Lichtenstein & Co (Limited) [1906-1907] 23 TLR 424 ***(refd)***

Re Keith Morris Pty Ltd & Ors [1971-1976] ACLC 28 ***(refd)***

Re Shields Marine Insurance Association [1868] 5 LR 368 ***(refd)***

Storm Financial Ltd (In Liq) v. Victorian Families Retirement & Investment Group Pty Ltd (No 2) [2009] 71 ACSR 295 ***(refd)***

The Seremban General Agency Ltd [1923] 3 FMSLR 3 ***(refd)***

Xiamen International Bank v. Sin Eng (Pte Ltd) [1993] 3 SLR 228 ***(refd)***

Legislation referred to:

Companies Act 1965, ss. 4(1), 16(6), 158(4), 227, 289

Companies (Winding Up) Rules 1972, rr. 46, 119

Other source(s) referred to:

J O' Donovan, *The Law of Company Liquidation*, 3rd edn, p 232

Enclosure 227:

For the applicant - Shanti Morgan (SY Liew with her); M/s Shearn Delamore & Co

Enclosure 234:
For the applicant - Sachpal Singh; M/s Megat Najmuddin Leong & Co

Enclosure 258:
For the applicant - KS Lau (DY Wong with him); M/s Shook Lin & Bok
For the official receiver - Muhammad Azmi Mashud; FC

Reported by Shah Saharudin

JUDGMENT

Umi Kalthum Abd Majid J:

The Applications

[1] There are three separate applications under s. 227 of the Companies Act 1965 by three applicants before the court whereby each application seeks to nominate person/persons as liquidator to take over the liquidation of the wound up respondent company from the official receiver. The respective applications are as follows:

(a) Enclosure 227 - Notice of motion dated 10 June 2011 filed by Equiticorp Holdings Ltd (In Statutory Management) and Equiticorp Financial Services Ltd (In Statutory Management) for, amongst other things, an order that one Robert Teo Keng Tuan of RSM NWT Advisory Services Sdn Bhd be appointed as liquidator of the respondent;

(b) Enclosure 234 - Notice of motion dated 26 August 2011 filed by Cheah Theam Kheng for, amongst other things, an order that one Augustine a/l James of Radiant Consulting Asia Sdn Bhd be appointed as liquidator of the respondent; and

(c) Enclosure 258 - Notice of motion dated 20 January 2012 filed by UOB 2006 Nominees (Tempatan) Sdn Bhd ("UOB Nominees") for, amongst other things, an order that one Dato' Gan Ah Tee and one Mok Chew Yin of BDO Consulting Sdn Bhd be appointed jointly and/or severally as the provisional liquidators or liquidators of the respondent.

Brief Facts

[2] The respondent company was ordered to be wound up on 25 April 2000. Subsequently, by order of the court on 26 July 2001, one Chuah Seong Phaik was appointed as liquidator of the respondent company to act with a committee of inspection.

[3] It is not in dispute that the respondent company's only valuable assets are 16 parcels of land located in Kuala Lumpur. On 9 January 2007, the then liquidator, Chuah Seong Phaik sold the properties to North Plaza Sdn Bhd at RM158 million. As the sale was conditional on the approval of the court, he filed an application on 10 January 2007 for the court's approval. The sale was opposed but the court allowed the application on 21 December 2009. On appeal to the Court of Appeal, the order of the High Court was set aside. This decision of the Court of Appeal was affirmed by the Federal Court.

[4] Subsequently, an application was made by Cheah Theam Keng to the High Court for the removal of Chuah Seong Phaik as liquidator. The application was allowed on 31 October 2011 by the court and the official receiver was appointed as liquidator.

[5] Pursuant to that appointment, the official receiver called for a separate meeting of creditors and contributors in order to determine the wishes of the parties as to whether an application should be made to court for a liquidator to be appointed. As a result, the official receiver's report dated 5 April 2012 was released and this can be seen in the affidavit affirmed by Wong Dan Yi as solicitor of the applicant in encl. 258 on 7 March 2013 (exh. 'WDY-1'). The report showed that separate meetings of the creditors and contributors were held on 28 March 2012. The creditors voted as follows:

(a) For the appointment of Augustine a/l James:

(i) Total votes: 16

(ii) Total value of claim: RM18,447,758.49

(b) For the appointment of Dato' Gan Ah Tee and Mok Chew Yin:

(i) Total votes: 1

(ii) Total value of claim: RM4,543,623.20

(c) For the appointment of Robert Teo Keng Tuan:

(i) Total votes: 3

(ii) Total value of claim: RM7,291,766.77

(d) For the official receiver to remain as liquidator:

(i) Total votes: 0

(e) Creditors who elected not to vote:

(i) Total: 1

(ii) Total value of claim: RM5,468,573.71

(f) Creditors who were absent:

(i) Total: 7

(ii) Total value of claim: RM7,083,006.62.

[6] As for the votes of the contributories, there was only one vote by the contributory having a 100% share value in favour of Dato' Gan Ah Tee and Moh Chew Yin to be appointed jointly and/or severally as liquidators.

[7] As the parties could not resolve and agree on the appointment of a particular liquidator, the three applications are now before the court for decision.

The Application In Encl. 227

[8] The applicants here apply in their capacities as creditors of the respondent. They contended that their nominee, Robert Teo, had already been appointed as liquidator for one United Securities Sdn Bhd ("USSB") which was wound up on 30 January 2007. USSB is a related company of the respondent wherein the respondent is a wholly owned subsidiary of USSB. The applicants submitted that Robert Teo should be appointed as liquidator as he is already managing the affairs of the respondent's parent company since 5 April 2007. They further submitted that USSB's assets of value are its shareholding in the respondent company and thus indirectly the 16 parcels of land owned by the respondent and accordingly Robert Teo is well placed to manage the respondent's affairs as well.

[9] The applicants relied on authorities such as *Re Keith Morris Pty Ltd & Ors* [1971-1976] ACLC 28, *Parmalat Capital Finance Ltd & Ors v. Food Holdings Ltd (In Liquidation) & Anor* [2009] 1 BCLC 274, *Dallhold Investments Pty Ltd (In Liq) v. Gold Resources Australia Ltd (provisional liquidator appointed)* [1991] 9 ACLC 1500, and *Australian Securities and Investments Commission v. Westpoint Corporation Pty Ltd* [2006] 56 ACSR 640 to support their proposition that in a situation involving liquidation of several companies in a group, the liquidation of each of the companies should be undertaken by the same liquidator unless there are serious conflicts of interest. The applicants further relied on the case of *Storm Financial Ltd (In Liq) v. Victorian Families Retirement & Investment Group Pty Ltd (No 2)* [2009] 71 ACSR 295 in support of their proposition that the same liquidator for the holding company may be appointed as a liquidator for a subsidiary company notwithstanding the possibility of disputes between the two companies because an application could be made to court by the liquidator in cases of conflict to resolve any possible disputes.

[10] This application was strongly opposed. The applicant in encl. 258 objected primarily on the ground that Robert Teo would inevitably be in a position of conflict of interest because he is already managing the affairs of the parent company, USSB, and it is common ground that the only valuable assets of USSB in the respondent are the 16 parcels of land in the respondent. Further, the applicant in encl. 234 also argued that Robert Teo being the liquidator of USSB and a creditor of the respondent would be a member of the respondent's committee of inspection whereby there would be a real danger of bias that Robert Teo's interest would be to solely satisfy the debt due and owing by the respondent to USSB at the expense of the other creditors.

[11] As an alternative to appointing Robert Teo as liquidator, the applicant in its written submission suggested that either Mak Kum Choon or Yeoh Siew Ming of Deloitte Corporate Solutions Sdn Bhd be appointed as liquidator of the respondent. On the mention date of 9 May 2013, counsel for the applicant in encl. 258 informed the court that they were agreeable to the appointment of either of them as liquidator. However, the solicitors for the applicant in encl. 234 informed the court that their client did not agree to the alternative nominees and prayed for their nominee to be appointed or that the official receiver to remain as liquidator.

A **The Application In Encl. 234**

[12] The applicant here applied in his capacity as a creditor and/ or contributory of the respondent company. The applicant submitted that its nominee, Augustine a/l James received the
B highest number of votes and combined total value of claim among the creditors. The applicant argued that its nominee received overwhelming support from majority of the creditors (as reflected above) with 16 votes and a total value of RM18,447,758.49. The applicant also contended that its nominee has been a court
C appointed liquidator and has managed disposal in liquidation of sums in excess of RM200 million.

[13] The applicant relied on s. 289 of the Companies Act 1965, and rr. 46 and 119 of the Companies (Winding Up) Rules 1972 to support its contention that the majority in number and value
D of creditors should be given effect to. As authority, the applicant cited the following cases - *Re Bloxwich Iron and Steel Company (The Weekly Notes) Part I of 1894, The Seremban General Agency Ltd* [1923] 3 FMSLR 3, *Re Hermann Lichtenstein & Co (Limited)* [1906-1907] 23 TLR 424 and *Re Bishop & Sons Limited* [1900]
E 2 Ch 254 - in support of its contention that due regard must be attached to the value of each creditor's debt and that the court will always consider the wishes of the majority in value of the creditors. Lastly, the applicant argued that when compared with
F the nominees of the other applicants, Augustine a/l James is the only independent nominee with no interest or conflict in the affairs of the respondent company.

[14] This application was opposed by the applicants in encl. 227 on the ground that the firm of Augustine a/l James, Radiant
G Consulting Asia Sdn Bhd is actually a company with a total issued and paid up share capital of RM3. They contended that there is real concern regarding the financial position of the company as it appears to be insolvent and more importantly, has failed to file statutory returns since 2007. They further submitted that the
H properties of the respondent are above RM400 million in value and that it would be perilous to leave the affairs of the company in the hands of Augustine a/l James who's company has been in constant breach of statutory provisions and is not in a sound financial position.

I

[15] The applicant in encl. 258 also opposed this application on the ground that Augustine a/l James is not competent to manage the affairs of the respondent as liquidator and that the court is duty bound to appoint liquidators "whom it assumes to have a high degree of commercial expertise" (*Northbourne Developments Pty Ltd v. Reiby Chambers Pty Ltd* [1989] 1 ACSR 79).

The Application In Encl. 258

[16] Under this application, the applicant contended that it has the necessary *locus* to file this application in its capacity as a contributor of the respondent company. This is a subject of contention and will be dealt with below. The applicant further submitted that its nominees ought to be the preferred choice because the value of the property subject to liquidation is in excess of RM150 million, that their nominees are from a larger establishment in contrast with the other proposed nominees, and that its nominees are very experienced and well regarded in the industry. The case of *Koh Heng Jin @ Koh Heng Leong v. Koh Hooi Cheow Realty Sdn Bhd (No 2)* [2009] 1 LNS 1646 was cited in support where Justice Anantham Kasinather JC (as he then was) appointed a liquidator after taking into account the fact that the estate in concern was worth in excess of RM30 million, that the interest of the parties would be better served by appointing a liquidator from an established firm dealing with vast experience in liquidation of large companies, and that a large firm would be insured for a far bigger amount than smaller firms.

[17] It was further submitted that in the circumstances of the present case, the creditors of the respondent would be paid in full once the properties of the respondent company are sold. The applicant, drawing support from an excerpt from *The Law of Company Liquidation* by J O' Donovan (3rd edition) at p. 232, submitted that in cases such as this, ie, "where there is no question of the creditors going unpaid", the wishes of the contributories should be given greater weight or preference over the wishes of the creditors.

[18] In opposing the present application, the applicants in encl. 227 argued as follows:

(a) that the applicant here does not have *locus* to make this application as it is neither a creditor nor contributory of the respondent. It was further contended that the applicant is in actual fact a creditor of USSB and not the respondent and

thus it is misconceived for the applicant to contend that they are a contributory of the respondent merely on the ground that the shares of the respondent were pledged to the applicant as security for a loan disbursed to USSB. Accordingly, they submitted that the applicant here is nothing more than a secured creditor to USSB whereby USSB's shares in the respondent company was pledged to the applicant as security for a loan;

(b) that a contributory is one who is liable to contribute to the assets of the company in the event of it being wound up (s. 4(1), Companies Act 1965); the applicant here does not come within the ambit of a contributory since it is not liable to make such contribution. This is supported by the deed of debenture between USSB and the applicant whereby the applicant would not be liable in respect of calls, instalments or any payments in respect of the shares. In other words, it was argued that the applicant is merely to take benefit and not the burden of the charge of shares. The case of *Re Shields Marine Insurance Association* [1868] 5 LR 368 was cited in support of the proposition that a surety is not a contributory within the Companies Act 1965; and

(c) apart from that, it was also contended that the nominees of the applicant are in conflict of interest on the ground that one of them, Dato' Gan Ah Tee was involved in the restructuring of the Lion Group and BDO Consulting Sdn Bhd was engaged as restructuring/monitoring accountants of Lion Corporation Bhd. It was further contended that Lion Corporation is related to North Plaza Sdn Bhd which was the company which purchased the 16 parcels of land owned by the respondent which was eventually set aside by the Court of Appeal (and subsequently affirmed by the Federal Court). Accordingly, it was argued that the appointment of the applicant's nominees in light of the involvement of Dato' Gan Ah Tee in the Lion Group restructuring exercise would be of concern.

[19] The applicant in encl. 234 similarly opposed this application and contended that the nominees nominated by the applicant would in no way facilitate the liquidation of the respondent as their sole purpose would be to secure the debt due to USSB to the detriment of the respondent's creditors.

[20] In response, the applicant in the present application contended as follows: A

(a) that the respondent is a wholly owned subsidiary of USSB. The applicant quoted s. 4(1) of the Companies Act 1965 which provides that a contributory "means a person liable to contribute to the assets of the company in the event of its being wound up, and includes the holder of fully paid shares in the company ..." to support its contention that it is a contributory of the respondent by virtue of being the holder of fully paid shares in the respondent company. Reference was also made to s. 16(6) and s. 158(4) of the Companies Act 1965 which deal with the register of members; B C

(b) that as holder of the respondent's shares as security for the loan disbursed to USSB, the applicant is a member and contributory of the respondent company. It was further submitted that this is in line with the findings of the Court of Appeal in *North Plaza Sdn Bhd v. United Securities Sdn Bhd* [2010] 1 CLJ 470; [2010] 1 MLJ 631 where it was held that USSB having pledged it shares only has a beneficial interest in the shares which are being held by the applicant. Two other authorities, namely *Xiamen International Bank v. Sin Eng (Pte Ltd)* [1993] 3 SLR 228 and *Envirico Ltd v. Farstad Supply A/S* [2011] 3 All ER 451 were cited to support the contention that where shares are registered in the name of a nominee, the nominee *vis-a-vis* the company holds the shares as the absolute owner in his own right, and that a security holder or nominee shall upon the transfer and registration of the security shares become a member of the company; and D E F

(c) in respect of the opposition on the ground of conflict of interest, the applicant submitted in reply that Dato Gan Ah Tee had acted as independent financial adviser and monitoring accountant for the financial lenders in the Group-Wide Restructuring Schemes of Lion Group and that neither of their nominees had any engagement relationship with Lion Diversified Holdings Bhd or North Plaza Sdn Bhd. In any event, the applicant contended that prior involvement with a company in liquidation is no bar to an appointment as liquidator "provided that the involvement is not likely to G H I

impede or inhibit the liquidator from acting impartially in the interests of all creditors or be such as would give rise to a reasonable apprehension on the part of a creditor that the liquidator might be so impeded or inhibited" (*Advance Housing Pty Ltd (In Liq) v. Newcastle Classic Development Pty Ltd* [1994] 14 ACSR 230). The applicant further submitted that to disqualify a liquidator merely because of an audit relationship would be against commercial reality (*Ooi Woon Chee & Anor v. Dato' See Teow Chuan & Ors And Other Appeals* [2012] 2 CLJ 501; [2012] 2 MLJ 713).

The Decision

[21] I dismiss all three applications in encls. 227, 234 and 258 with no order as to costs except for prayer 1 of encl. 258 which is allowed. The official receiver shall therefore remain as liquidator of the respondent and the order given by Justice Hamid Sultan Abu Backer (as he then was) on 21 October 2011 is hereby maintained. My reasons are as follows.

[22] All three applicants were not able to reach a consensus on the appointment of a suitable private liquidator. The applicant in encl. 227 and the applicant in encl. 258 indicated to the court that they were agreeable to the appointment of either of the alternative nominees nominated by the applicant in encl. 227, namely Mak Kum Choon or Yeoh Siew Ming of Deloitte Corporate Solutions Sdn Bhd, however the applicant in encl. 234 was not agreeable. Hence, parties indicated to the court that they wished to proceed with their respective applications.

Enclosure 234

[23] The opposition against the nominee *vide* encl. 234, Augustine a/l James as liquidator is on the ground that his company appears to be insolvent and that the company has not been filing statutory returns since 2007. This can be seen *vide* exh. 'BGS-1' of the affidavit of Bruce Graham Stowell affirmed on 12 September 2011 on behalf of the applicant in encl. 227. This averment was not denied by the applicant in encl. 234 who instead averred in its affidavit in reply that the appointment of Augustine a/l James is in his personal capacity and not related to the financial status of the company and that Augustine a/l James has managed assets exceeding RM200 million for disposal under

liquidation. Even though I acknowledge that Augustine a/l James obtained the most number of votes and value of claim among the creditors, nevertheless, I find that the concerns of the remaining applicants are well founded based on exh. 'BGS-1'. Thus, I find that Augustine a/l James is not suitable to be appointed as liquidator.

Enclosure 227

[24] As for Robert Teo, the nominee *vide* encl. 227, I find that there is a possibility that his position may be in conflict with his role as liquidator based on the ground that he is already the appointed liquidator for the respondent's parent company, USSB. As USSB's only valuable assets available is its stake in the respondent, this places Robert Teo in conflict of interest *vis* the other creditors of the respondent company and where his impartiality may be questioned *vis* the interest of the respondent company *vis a vis* USSB.

Enclosure 258

[25] With respect to the applicant in encl. 258, I find the argument that UOB Nominees is not a contributory to be misconceived. I find that being the holder of the shares owned by USSB which was charged to them, UOB Nominees fall within the ambit of the definition of "contributory" under s. 4(1) of the Companies Act 1965 *vis* the phrase "and includes the holder of fully paid shares in the company" (see *Lee Teng Siong v. Lee Kheng Lian & Ors* [2006] 4 CLJ 443; [2006] 5 MLJ 609 at para. 4 of the judgment). Had USSB remained as holders of the shares and not charged it to UOB Nominees *vide* a deed of debenture, USSB would exclusively fall within the definition of a "contributory". However, having charged the shares to UOB Nominees, UOB Nominees had taken over the rights of USSB in relation to the shares (see *Xiamen International Bank v. Sin Eng (Pte Ltd)* (*supra*) and *Envirico Ltd v. Farstad Supply A/S* (*supra*)). It was for that reason that the Court of Appeal in *North Plaza Sdn Bhd v. United Securities Sdn Bhd* (*supra*) held that USSB having pledged it shares only has a beneficial interest in the shares and does not fall within the ambit of a "contributory" of the respondent company. Accordingly, I find that the applicant in encl. 258 has the requisite *locus* to make the application.

[26] I find the nominees *vide* encl. 258, Dato' Gan Ah Tee and Mok Chew Yin, are not suitable to be appointed as Dato' Gan Ah Tee is in a position of conflict of interest due to his previous dealings with the Lion Group which is related to North Plaza Sdn Bhd where North Plaza Sdn Bhd had purchased the 16 parcels of land belonging to the respondent in a transaction that was set aside by the Court of Appeal and affirmed by the Federal Court. I am of the view that instances of conflict should be avoided as far possible. Since the applicant in encl. 258 had nominated both nominees in a joint and several capacity, both the nominees are affected. Thus, both Dato' Gan Ah Tee and Mok Chew Yin are not suitable to be appointed as liquidators of the respondent.

Official Receiver

[27] Despite having argued at length on why their nominees should be appointed and why the other nominees should not be appointed, none of the applicants had contended that the official receiver is incompetent or incapable of dealing with the winding up of the affairs of the respondent and distributing its assets. I am of the view that by virtue of her office, the official receiver is impartial and would act in the best interest of all creditors.

[28] Further, I find that as the matter primarily involves the sale of 16 parcels of land, the official receiver would be in the best position to take the necessary steps to do so expeditiously. It can be seen from the official receiver's report dated 5 April 2011 (exh. 'WDY-1' in affidavit affirmed on 7 March 2013 by Wong Dan Yi as solicitor of the applicant in encl. 267 for the purpose of the applicant in encl. 258) that the documents and titles pertaining to the 16 parcels of land had been handed over to the official receiver. The appointment of a new liquidator would only cause unnecessary delay and incur further expenses. Put simply, there is nothing to indicate that the official receiver is not capable of dealing with the winding up of the respondent's affairs and distribution of the respondent's assets in a timely fashion and in the best interests of all the respondent's creditors as well as its members.

[29] In *Procam (Pte) Ltd v. Charles Jocelyn Tichborne Nangle & Anor* [1990] 4 BLJ 208; [1990] 3 MLJ 269, the Singapore High Court observed that it is not in the interest of the liquidation of a company to remove the existing liquidator where most matters in

the liquidation has been completed. Thien J in holding that the existing liquidator should be allowed to continue with the liquidation was of the view that an order to remove the existing liquidator would only involve incurring further costs and expenses. Similarly, I am of the view that the official receiver should be allowed to continue with the liquidation of the respondent as the only core matter left in the liquidation is the disposal of the 16 parcels of land. I am of the view that the official receiver is competent and capable of continuing with the liquidation of the respondent. Furthermore, to substitute the official receiver at this stage would only involve unnecessary costs and cause further delay. It is therefore in the best interest of the respondent in liquidation for the official receiver to remain as liquidator.

[30] Finally, I am not able to accept the proposal of the applicants in encl. 227 to appoint Mak Kum Choon or Yeoh Siew Ming of Deloitte Corporate Solutions Sdn Bhd as it was made *vis* a submission from the Bar and not applied *via* an application.